

## Bureau of Indian Affairs, Interior

## § 11.1114

(5) Place the minor in a foster home or a relative's home outside the boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(e) A permanency planning hearing must be held within 18 months after the original placement and every six months thereafter to determine the future status of the minor except when the minor is returned to his or her home and court supervision ceases.

### § 11.1113 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 of this part shall be afforded the parties

in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1111 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

### § 11.1114 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall set a date for the termination hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

(d) Summons:

## § 11.1115

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(1) At least five working days prior to the termination hearing, the children's court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

(e) The children's court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) All the rights listed in § 11.906 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

(2) The children's court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(3) The children's court may terminate parental rights if, following efforts to prevent or eliminate the need to remove the minor, it finds such efforts to have been unsuccessful, and it finds beyond a reasonable doubt that:

(i) The child has been abandoned;

(ii) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(iii) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(iv) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(v) The voluntary written consent of both parents has been acknowledged before the court.

(f) Dispositional alternatives:

(1) If parental rights to a child are terminated, the children's court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow the adoption procedures of the tribe, or, in their absence, the adoption procedures of the state within which it is located.

(2) If parental rights to a child are not terminated, the children's court shall make a disposition according to § 11.1112 of this part.

(g) The termination order constitutes a final order for purposes of appeal.

(h) No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

### § 11.1115 Information collection.

(a) The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076-0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076-0094], Office of Management and Budget, Washington, DC 20502.

### Subpart L—Child Protection and Domestic Violence Procedures

SOURCE: 73 FR 39862, July 11, 2008, unless otherwise noted.